

*AF*Attorney's Docket No.: 10235-048001
IFW 3622

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Bergh, et al.
Serial No. : 09/777,614
Filed : February 5, 2001
Title : OFFER DELIVERY SYSTEM

Art Unit : 3622
Examiner : Raquel Alvarez
Conf. No. : 6722

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

POWER OF ATTORNEY BY ASSIGNEE AND ELECTION OF
ASSIGNEE TO CONDUCT PROSECUTION TO EXCLUSION OF INVENTORS

The undersigned, as authorized representative of the assignee of the entire right, title and interest in the above-identified application, hereby appoints

DENIS G. MALONEY, REG. NO. 29,670	DAVID L. FEIGENBAUM, REG. NO.
	30,378
PAUL A. PYSHER, REG. NO. 40,780	TIMOTHY A. FRENCH, REG. NO.
	30,175
J. ROBIN ROHLICEK, J.D., PH.D., REG. NO. 43,349	JEFFREY J. BARCLAY, REG. NO.
	48,950

as its attorney to prosecute the application and to transact all business in the Patent and Trademark Office connected therewith with full powers of substitution and revocation, said appointment to be to the exclusion of the inventors and their attorney(s) in accordance with the provisions of 37 CFR §3.71 *et seq.* of the Patent Office Rules of Practice.

Ownership is in the assignee by virtue of the assignment documents filed on July 16, 2001 and an asset purchase agreement between Marketsoft Software Corporation and Unica Corporation (portions attached). The documents evidencing ownership have been reviewed and to the best of the assignee's knowledge and belief, title is in the assignee.

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

08/25/2006
Date of Deposit

Meredith A French
Signature

Meredith A. French
Typed or Printed Name of Person Signing Certificate

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Please direct all communications regarding the application to **Customer Number 26161.**

Signature: J. H. D. S.

Date: 8-22-06

Typed name: Jon Salom

Title: General Counsel

Assignee: Unica Corporation

JFB/mvf

Fish & Richardson P.C.
Telephone: (617) 542-5070
Facsimile: (617) 542-8906

21362620.doc



ASSET PURCHASE AGREEMENT

Dated as of December 20, 2005

among

UNICA CORPORATION,

MARKETSOFT SOFTWARE CORPORATION

and

**ROBERT G. HISS,
as Stockholder Representative**

(c) Section 2.9(c) of the Disclosure Schedule lists individually all Acquired Assets having a book value greater than \$10,000, indicating the cost, accumulated book depreciation (if any) and the net book value of each such fixed asset as of September 30, 2005.

(d) Each asset that is being transferred to the Buyer as part of the Acquired Assets and that the Seller has possession of pursuant to a lease agreement or other contractual arrangement is in such condition that, upon its return to its lessor or owner under the applicable lease or contract, the obligations of the Seller to such lessor or owner will have been discharged in full.

2.10. Real Property.

(a) The Seller does not own any real property.

(b) Section 2.10(b) of the Disclosure Schedule lists all Leases and lists the term of each Lease and the rent payable thereunder. The Seller has delivered or otherwise made available to the Buyer complete and accurate copies of the Leases. Each Lease is a legal, valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms. The Seller is not in breach or violation of, or default under, any Lease, and no event has occurred, is pending or, to the knowledge of the Seller, is threatened, that, after the giving of notice, with lapse of time, or otherwise, would constitute a breach or default by the Seller.

2.11. Intellectual Property.

(a) Section 2.11(a) of the Disclosure Schedule lists (i) each patent, patent application, copyright registration or application therefor, and trademark, service mark and domain name registration or application therefor of the Seller and (ii) each Customer Deliverable of the Seller.

(b) The Seller owns or has the right to use all Intellectual Property necessary (i) to use, manufacture, have manufactured, market and distribute the Customer Deliverables and (ii) to operate the Internal Systems. Upon execution and delivery by the Seller to the Buyer of the instruments of conveyance referred to in Section 1.5(b)(iii), each item of Seller Intellectual Property will be owned or available for use by the Buyer immediately following the Closing on substantially similar terms and conditions as it was immediately prior to the Closing. The Seller has taken commercially reasonable measures to protect the proprietary nature of each item of Seller Intellectual Property, and to maintain in confidence all trade secrets and confidential information, that it owns or uses. No other Person has any rights to any of the Seller Intellectual Property owned by the Seller (except pursuant to agreements or licenses specified in Section 2.11(d) of the Disclosure Schedule), and, to the knowledge of the Seller, no Person is infringing, violating or misappropriating any of the Seller Intellectual Property.

(c) None of the Customer Deliverables, or the marketing, distribution, provision or use thereof, infringes or violates, or constitutes a misappropriation of, any Intellectual Property rights of any Person. To the knowledge of the Seller, none of the Internal Systems, or the use thereof, infringes or violates, or constitutes a misappropriation of, any Intellectual Property rights of any Person. Section 2.11(c) of the Disclosure Schedule lists each complaint, claim or notice, or written threat thereof, received in writing by the Seller alleging any such infringement, violation or misappropriation; and the Seller has provided or otherwise made available to the Buyer complete and accurate copies of all written documentation in the possession of the Seller relating to each such complaint, claim, notice or threat. The Seller has provided or otherwise made available to the Buyer complete and accurate copies of all written documentation in the Seller's possession relating to claims or disputes known to the Seller concerning any Seller Intellectual Property.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

UNICA CORPORATION

By: _____

Name: Yuchun Lee

Title: Chief Executive Officer and President

MARKETSOFT SOFTWARE CORPORATION

By: _____

Name: Robert G. Hiss

Title: President & Chief Executive Officer

ROBERT G. HISS

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

UNICA CORPORATION

By: _____

Name:

Title:

MARKETSOFT SOFTWARE CORPORATION

By: 
Name: Robert G. Hiss
Title: President & Chief Executive Officer

ROBERT G. HISS





(b) Each Seller Plan has been administered in all material respects in accordance with its terms and the Seller has in all material respects met its obligations with respect to each Seller Plan and has made all required contributions thereto. The Seller and each Seller Plan are in compliance in all material respects with the currently applicable provisions of ERISA and the Code and the regulations thereunder (including Section 4980B of the Code, Subtitle K, Chapter 100 of the Code and Sections 601 through 608 and Section 701 et seq. of ERISA).

(c) To the knowledge of the Seller, there are no Legal Proceedings (except claims for benefits payable in the normal operation of the Seller Plans and proceedings with respect to qualified domestic relations orders) against or involving any Seller Plan or asserting any rights or claims to benefits under any Seller Plan that could give rise to any material liability.

(d) All the Seller Plans that are intended to be qualified under Section 401(a) of the Code have received determination letters from the Internal Revenue Service to the effect that such Seller Plans are qualified and the plans and the trusts related thereto are exempt from federal income taxes under Sections 401(a) and 501(a), respectively, of the Code. Each Seller Plan that is required to satisfy Section 401(k)(3) or Section 401(m)(2) of the Code has been tested for compliance with, and satisfies the requirements of Section 401(k)(3) and Section 401(m)(2) of the Code for each plan year ending prior to the Closing Date.

(e) The Seller has never maintained an Employee Benefit Plan subject to Section 412 of the Code or Title IV of ERISA.

(f) At no time has the Seller been obligated to contribute to any "multiemployer plan" (as defined in Section 4001(a)(3) of ERISA).

(g) There are no unfunded obligations under any Seller Plan providing benefits after termination of employment to any employee of the Seller (or to any beneficiary of any such employee), including but not limited to retiree health coverage and deferred compensation, but excluding continuation of health coverage required to be continued under Section 4980B of the Code or other applicable law and insurance conversion privileges under state law.

(h) No Seller Plan is funded by, associated with or related to a "voluntary employee's beneficiary association" within the meaning of Section 501(c)(9) of the Code.

(i) Each Seller Plan is amendable and terminable unilaterally by the Seller at any time without liability or expense to the Seller or such Seller Plan as a result thereof (other than for benefits accrued through the date of termination or amendment and reasonable administrative expenses related thereto).

(j) Section 2.17(j) of the Disclosure Schedule sets forth the policy of the Seller with respect to accrued vacation, accrued sick time and earned time off and the approximate amount of such liabilities as of the date of this Agreement.

2.18. Environmental Matters.

(a) The Seller has complied with all applicable Environmental Laws in all material respects, and has no material liabilities or obligations arising from the release of any Materials of Environmental Concern into the environment. There is no pending or, to the knowledge of the Seller, threatened civil or criminal litigation, written notice of violation, formal administrative proceeding, or investigation, inquiry or information request by any Governmental Entity, relating to any Environmental Law involving the Seller. The Seller is not party to or bound by any court